



United States
Department of
Agriculture

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Farm Service Agency

Fact Sheet

Montana Agricultural Mediation Program

Montana State Producer Handbook



Background

The U.S. Department of Agriculture's (USDA) Agricultural Mediation Program helps agricultural producers, their lenders, and other persons directly affected by the actions of USDA resolve disputes. Through mediation, a trained, impartial person (mediator) helps participants review their conflicts, identify options, and agree on solutions.

Mediation is a valuable tool for settling disputes in many different USDA program areas. These include farm loans, farm and conservation programs, wetland determinations, rural water loan programs, grazing on national forest system lands, and pesticides. USDA's Farm Service Agency (FSA) administers the program, reauthorized by the United States Grain Standards Act of 2000.

How Mediation Works

Persons disputing USDA actions that directly affect them are offered the opportunity to request mediation services as part of the Department's informal appeals process. However, parties must request mediation before an appeal hearing is held with USDA's National Appeals Division. USDA customers may accept or decline the offer to participate in mediation.

If mediation is requested, FSA mediation officials suggest steps

participants should take to prepare for mediation. Mediation officials then assign one or more mediators to the case. Participants may accept or eliminate these mediators. Once a mediator is accepted, all potential parties are advised that a mediation process is underway and given a chance to participate.

The mediator schedules a time and place to meet that is convenient to all parties. Mediation length can vary from a few hours to several days, depending on the complexity of issues and the number of participants. If an agreement is not reached, the case is closed and all parties remain free to pursue other available administrative appeals or legal actions.

Mediators

Unlike a judge or arbiter, a mediator has no decision-making authority, but is there to help participants resolve problematic issues and settle disputes. Successful mediation is based on the cooperation and involvement of all participants.

The Montana FSA Agency maintains a list of mediators. This list includes mediators that have been selected for their experience in mediation, as well as their experience with government and agricultural/environmental issues. The list will be expanded as more mediators express a desire to be included and decreased as mediators elect not to participate.

Selection of Mediators

A Blanket Purchase Order (BPA) will be established with each mediator on a fiscal year basis. The BPA will be the vehicle of payment for the Agency's share of the cost of mediation. When the producer requests mediation, mediators will be contacted on a rotating basis and asked if they wish to participate in the mediation. Once two mediators have agreed to accept the case if offered, the producer will be given the choice of which mediator to use. The producer's choice will be the mediator assigned to the case. The mediator will also be responsible to communicate in writing the results of the mediation to the Agency and the other participants in the mediation.

Selection of Agency Representative

The State Executive Director (SED) will be responsible for selecting the Agency representative to attend the mediation session. The Agency representative will not be authorized to make any concessions or commitments on behalf of the Agency without prior appropriate authorization.

Mediation Benefits for Lenders and Borrowers

Successful mediation benefits participants in the following ways:

- Mediation may settle disputes within a participant's financial means, providing a low-cost

alternative to appeals or to often expensive litigation and bankruptcy.

- The program may reduce stress caused by lengthy litigation. While it can take years for a case to filter through the courts, mediation generally takes only a few meetings to complete.
- The program has a high success rate of 73 percent and is well supported by government officials and community leaders.
- Mediation is confidential. Documents are not used for any other legal action against the participants.
- Mediators can also provide referrals for producers and lenders and informally discuss with them issues or concerns.

Mediation Cost to Participants

Certain states have a certified mediation program. This means that, at the request of the Governor, FSA has helped the state develop a mediation program authorized or administered by a state government agency or by the Governor, Montana is not a certified state. The responsibility of mediation cost is as follows:

Agency responsibility

The agency will be responsible for reimbursement to the mediator the following costs:

- Meeting room rental
- Correspondence cost (i.e. postage, phone calls, FAX costs, duplicating costs, excluding time;
- A prorated share of mediators time, including preparation, mediation and follow-up time;
- A prorated share of mileage, per diem and lodging and other associated travel costs.

Participant(s) Responsibility

The other parties involved in mediation will be responsible for reimbursement to the mediator the following costs:

- A prorated share of mediators time, including preparation, mediation and follow-up time;
- A prorated share of mileage, per diem and lodging and other associated travel costs.

Note: For these purposes, prorated means an equal share divided among the parties involved in the mediation. For example, if the Agency and one producer are involved, the Agency pays fifty percent of the identified costs; if the Agency, a producer and creditor are involved in mediation, the Agency will pay thirty-three and one third percent. Representatives of any party are not considered an additional party.

Obligation

The parties involved in mediation, including the Agency, will be required to sign agreeing to the terms of the mediation prior to any costs being incurred by any party.

State Mediation Program Contacts

If you have questions regarding mediation or a disputed matter with the Montana Farm Service Agency, please contact your local FSA office or Dick Deschamps, Chief Administrative Officer at the Montana State FSA office at 406-587-6875.